



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0431]

RIN 1625-AA08

**Special Local Regulation; Roy Webster Cross Channel Swim, Columbia River,
Cascade Locks, OR**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary regulated area for certain waters of the Columbia River. This action is necessary to provide for the safety of participants and the maritime public during a cross-channel swim. This proposed rulemaking would prohibit non-participant persons and vessels from being in the regulated area unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0431 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail msupdxwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Roy Webster Cross-Channel Swim is an annual event that has been running for the last 74 years on the Columbia River in the vicinity of Hood River, OR occurring on or around Labor Day. Participants are ferried across the Columbia River from the Hood River Marina to the Washington shore at the start of the event. Once on the other side, the participants jump off the ferry and swim back across the river following a swim lane that is lined with volunteers in sailboats, kayaks and paddleboards. Approximately 300 swimmers participate in this event annually. On April 4, 2019, the Hood River Chamber of Commerce notified the Coast Guard that it will be moving the swim location from Hood River, OR, to Cascade Locks, OR.

The purpose of this rulemaking is to relocate the regulated area from Hood River, OR to Cascade Locks, OR to ensure the safety of event participants, the marine environment and the protection of the navigable waterway during the scheduled event for

2019. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Thirteenth Coast Guard District Commander is proposing to establish a regulated area from 5:30 am to noon on September 2, 2019. As the event consists of participants swimming across the navigable channel, the Coast Guard feels that it would be necessary to establish a regulated area that would cover all navigable waters of the Columbia River between river mile 149 and river mile 151 during the event.

Since 2017, a regulated area between River Mile 169 and River Mile 170 has been established for this event under 33 CFR 100.1302. Because the location of the event has been changed for 2019, we will not be enforcing the § 100.1302 regulations for the Roy Webster Cross Channel Swim event this year, and instead are issuing this notice of proposed rulemaking (NPRM) to establish a temporary rule for 2019.

This NPRM proposes to create a temporary regulated area in the vicinity of Cascade Locks, OR, rather than Hood River, OR, for this year's event in accordance with the request of the organizers. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, short duration, and the event’s long history. Commercial vessel traffic would be able to transit the area with permission from the COTP or a designated representative. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting approximately six hours that would prohibit entry within a specified section of the Columbia River in the vicinity of Cascade Locks, OR. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online

docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1

2. Add § 100.T13-0431 to read as follows:

§ 165.T13-0431 Special Local Regulation; Roy Webster Cross Channel Swim, Columbia River, Cascade Locks, OR.

(a) *Regulated area.* These waters are in the vicinity of Cascade Locks, OR on the Columbia River between River Mile 149 and River Mile 151.

(b) *Effective period.* This regulation will be in effect from 5:30 a.m. to noon on September 2, 2019.

(c) *Special Local regulations.* (1) Non-participant personnel and vessels are prohibited from entering the regulated area unless authorized by the Coast Guard Patrol Commander (PATCOM).

(2) The Coast Guard may patrol regulated area under the direction of a designated PATCOM. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by

the call sign "PATCOM." Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

(3) PATCOM may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) PATCOM may delay or terminate the event at any time it is deemed necessary to ensure the safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

(5) Vessels may not transit the regulated areas without PATCOM approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(6) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective date and time.

D. G. Throop,
RADM, U.S. Coast Guard,
Commander, Thirteenth Coast Guard District.
[FR Doc. 2019-13627 Filed: 6/25/2019 8:45 am; Publication Date: 6/26/2019]